

AUGUST H. SNYDER

IBLA 71-303

Decided September 28, 1972

Appeal from a decision by the Oregon state office rejecting an application for an additional enlarged homestead.

Set aside and remanded.

Enlarged Homesteads: Generally

A person who has patented an original homestead of less than one quarter section is entitled to obtain an enlarged homestead entry for additional lands not to exceed 320 acres when added to his original homestead.

Additional Homesteads -- Enlarged Homesteads: Applicants

In applying departmental regulation 43 CFR 2511.1(b)(4), which disqualifies a person from acquiring a homestead entry when he owns more than 160 acres of land in the United States, to applications for additional entries under the Act of February 20, 1917, only lands acquired by the applicant under other than the homestead laws are to be considered in testing the qualifications of the applicant.

Enlarged Homesteads: Applicants

An applicant for an additional enlarged homestead pursuant to section 7 of the Enlarged Homestead Act need only show as to land ownership, that the tract applied for together with other land he has entered or acquired under the nonmineral public land laws will not exceed 480 acres.

OPINION BY MR. RITVO

August H. Snyder has appealed to the Secretary of the Interior from a decision dated May 12, 1971, by the Oregon state office of the Bureau of Land Management, rejecting his application for an enlarged homestead on the grounds that he failed to qualify as a proper applicant.

Snyder obtained a patent, number 1108206, for an original homestead entry, Spokane 017749, for 60 acres in sec. 15, T. 36 N., R. 31 E., Willamette Meridian, Washington, on May 9, 1940. On April 5, 1971, he filed an application for an enlarged homestead for 135.48 acres, described as lots 1, 2, 3, and 4, sec. 3, T. 26 N., R. 27 E., W.M., Washington. The state office gave two reasons for rejecting Snyder's application. First, in order to file for an enlarged homestead, a person must qualify to file for an original 160-acre homestead. Since Snyder already had received a patent for a 60-acre homestead he was not qualified to file for an original homestead entry of 160 acres and thus did not qualify to make entry under the Enlarged Homestead Acts. Secondly, under 43 CFR 2511.1(b)(4) a person owning over 160 acres in the United States is not qualified to make an entry under the homestead laws, and since Snyder owned 220 acres due to an inheritance of 160 acres, he was considered as not being qualified.

The state office's decision is correct for the reasons given, if Snyder's application is considered solely as one for an original enlarged homestead.

There are, however, other statutes permitting additional entries by persons who have made a prior entry under one of the homestead laws. <sup>1/</sup> While in his application (Form 2211-1), Snyder placed an "X" in the box labeled "enlarged homestead entry," he also completed item 2(b), which reads: "If an additional homestead entry, give the description of original entry." Snyder answered item 2(b) with the entry number and land description of his original entry. In addition, he attached a petition for classification of the land described in his application for entry pursuant to item 2(b). In a letter accompanying his application, Snyder commented that he was trying to finish his homestead. Further, in his appeal, Snyder refers to 43 CFR 2211.6-5(a) and 2211.6-5(d)(now 43 CFR 2514.3(a) and 2514.3(d)(1972)). These paragraphs are part of the regulation pertaining to additional entries for incontiguous lands made pursuant to section 7 of the Enlarged Homestead Act, as amended by the Act of July 3, 1916, 43 U.S.C. § 218 (1970).

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<sup>1/</sup> Act of March 2, 1889, 43 U.S.C. § 214(1970); Act of February 19, 1909, as amended 43 U.S.C. § 218(c)(d) and (g)(1970); Act of February 20, 1917, 43 U.S.C. § 215 (1970).

Examining the document in this guise, we consider first its efficacy as an application under section 7 of the Enlarged Homestead Act, supra, Section 7 provides that any person who has made a homestead entry of less than 320 acres of land of the character described in the Enlarged Homestead Act, 43 U.S.C. § 218(a), and has submitted final proof may enter public land of similar character, not contiguous to his first entry, which shall not with his original entry exceed 320 acres. To be eligible under section 7 an applicant must show that he has made a prior entry of land which has been, or which he petitions to be, classified as suitable for entry under the Enlarged Homestead Act, 43 CFR 2514.3(e). The applicant also must show that he has not already made an additional entry under section 7, and that he has not entered, acquired, or is not claiming, under the nonmineral public land laws, lands which with the tract applied for exceed 480 acres. 43 CFR 2514.3(d). So far as the records indicate, Snyder is an eligible applicant under section 7. Therefore, his application should have been considered as filed under section 7.

Snyder's petition for classification, however, does not satisfy the requirements of a petition for designation of land as suitable for entry under the Enlarged Homestead Act. 43 CFR 2514.3(g).

If Snyder desires to pursue his application he must file a proper petition for designation within 60 days of the date of this decision or his application will be rejected. 2/

We also note that Snyder is eligible for an additional entry pursuant to the Act of February 20, 1917, 43 U.S.C. § 215 (1970). This Act permits a person who has perfected a homestead entry for less than 160 acres, and who is entitled to an additional entry, to enter a tract meeting the descriptions of the Enlarged Homestead Act equal to an amount of land double that which he would be entitled to appropriate if the land was not so designated. While eligibility for an additional entry under this Act requires that the applicant own over 160 acres of land in the United States, land acquired under the homestead laws is not considered in testing his qualifications. Instructions, 49 L.D. 308 (1922). Therefore, the 60 acres patented to Snyder under the homestead law must be subtracted from the 220

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2/ Snyder also asks for a waiver of the requirements as to residence and cultivation imposed by section 7, supra, on additional entries made on tracts more than 20 miles distant from the original entry. There is no provision for granting a waiver.

acres he owns, leaving 160 acres. Since this is not over 160 acres, he is not disqualified for owning more than 160 acres. The pertinent regulation, provides that where an application is made under section 7, supra, and the authorized officer refuses to designate under the Enlarged Homestead Act the tract originally entered, the application may be allowed under the provisions of the Act of February 20, 1917, supra. 43 CFR 2514.5(f). 3/

If Snyder files a proper petition for designation as directed, his application will be considered under the Act of February 20, 1917, assuming it does not qualify under section 7, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (4 CFR 4.1), the decision of the Bureau of Land Management is set aside and remanded for further proceedings consistent herewith.

Martin Ritvo  
Member

We concur:

Joseph W. Goss  
Member

Anne Poindexter Lewis  
Member

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3/ The Act of February 20, 1917, also requires the entryman to meet certain requirements as to a habitable house, residence, and cultivation. 43 CFR 2514.5(g).

